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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
13

14 RESOLUTE FOREST PRODUCTS, INC.,
et al.,

15 v.
16 Plaintiffs,

17 GREENPEACE INTERNATIONAL, *et al.*,

18 Defendants.

19 CASE NO. 4:17-CV-02824-JST

20 **PLAINTIFFS' OPPOSITION TO**
DEFENDANTS' ADMINISTRATIVE
MOTION REGARDING BRIEFING
SCHEDULE FOR ATTORNEY FEE
MOTIONS

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1 Pursuant to Local Rule 7-11(b), Plaintiffs Resolute Forest Products, Inc., Resolute FP US,
2 Inc., Resolute FP Augusta, LLC, Fibrek General Partnership, Fibrek US, Inc., Fibrek International
3 Inc., and Resolute FP Canada, Inc. (collectively, “Plaintiffs”) submit this Response to Defendants’
4 Administrative Motion Regarding Briefing Schedule for Attorney Fee Motions (the “Motion”)
5 (ECF No. 545).

6 **INTRODUCTION**

7 1. Defendants’ Motion asks the Court to retain jurisdiction and set a briefing schedule
8 to adjudicate the parties’ respective claims for fees pursuant to the Sanctions Order.¹ As set forth
9 herein, the time for defendants to file a fee application has long passed.² Accordingly, Plaintiffs
10 respectfully request that the Court deny defendants’ Motion. In the event the Court does retain
11 jurisdiction, in the interest of judicial economy, Plaintiffs request that the Court bifurcate briefing
12 on the fee applications and limit the initial briefing to the threshold issue of timeliness before the
13 Court and the parties expend additional resources briefing the amount of the parties’ respective
14 awards.

15 2. Defendants’ Motion concedes that Judge Westmore’s Sanctions Order set
16 December 1, 2022 as the deadline for the parties to move for attorney’s fees, absent a stipulation
17 to extend that deadline. (See ECF No. 545, ¶ 6.) The parties never stipulated to extend the
18 deadline.

19 3. Nevertheless, defendants now claim that Plaintiffs’ appeal of the Sanctions Order
20 stayed the parties’ obligation to move for attorney’s fees. (*Id.* at ¶ 9.) But the law is clear that
21 “[t]he filing of objections to a ruling by a magistrate judge on a nondispositive matter does not
22 automatically stay operation of that order.” *Hanni v. Am. Airlines, Inc.*, 2009 WL 1505286, at *3
23 (N.D. Cal. May 27, 2009) (citing *Keithley v. Homestore.com*, 2008 WL 4298203 (N.D. Cal. Sept.
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25 ¹ Capitalized terms have the meaning ascribed to them in defendants’ Motion. (ECF No. 545.)

26 ² In the event the Court determines that defendants’ proposed fee applications are timely,
27 Plaintiffs intend to move for those fees awarded to Plaintiffs in the Sanctions Order.

1 18, 2008)). To the contrary, “absent a stay, a party must promptly comply with a court order. . . .”
2 *Advanced Microtherm, Inc. v. Norman Wright Mech. Equip. Corp.*, 2010 WL 10133699, at *1
3 (N.D. Cal. Sept. 22, 2010) (party’s failure to comply with court’s order “for over five months was
4 without ‘substantial justification’”). *See also Rosen v. Urb. Commons, LLC*, 2021 WL 3264146,
5 at *2 (C.D. Cal. July 23, 2021) (“What Defendants should have done is seek a stay of that order. . . .
6 not act as if my order was of no consequence.”); *In re AIR CRASH AT TAIPEI, TAIWAN on Oct.*
7 *31, 2000*, 2002 WL 32155477, at *5 (C.D. Cal. Oct. 23, 2002) (“If an objection operates as a stay
8 of the order, not only is the losing litigant given an artificial incentive to object, but the
9 magistrate’s decision-making ability is eroded. . . . Indeed, such an interpretation would
10 essentially reduce the magistrate’s order to the status of a recommendation where an objection is
11 raised.”) (citation omitted); *Garity v. Donahoe*, 2014 WL 4402499, at *2 (D. Nev. Sept. 5, 2014)
12 (“the desire to maintain the ‘status quo’” did not warrant a finding in favor of automatic stay).

13 4. Although defendants attempt to rely on Federal Rule of Civil Procedure 54(d)(2)
14 (*see* ECF No. 545 at ¶ 12), that provision does not apply “to claims for fees and expenses as
15 sanctions for violating these rules. . . .” Fed. R. Civ. Proc. 54(d)(2)(E). Moreover, defendants
16 concede that a motion for attorney’s fees pursuant to Rule 54(d) must be filed within 14 days after
17 entry of judgment “unless ‘a statute or a court order provides otherwise’” (ECF No. 545 at ¶
18 12). Here, the Sanctions Order specifically provided the deadline for defendants to file a fee
19 application, and thus that Order and not Rule 54 governs.

20 5. Accordingly, Plaintiffs respectfully request that the Court deny defendants’ Motion.

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Respectfully submitted,

2 BROWN RUDNICK LLP

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